DIGEST OF RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

CITY OF RICHMOND *v.* ROSE.

Jan. 20, 1921.

[105 S. E. 554.]

Upon rehearing. Former opinion (102 S. E. 561) adhered to.

H. R. Pollard, of Richmond, for plaintiff in error.
Fulton & Wicker, of Richmond, for defendant in error.

PER CURIAM. Upon a rehearing of this cause, the court adheres to its former decision (127 Va. —, 102 S. E. 561), Judges BURKS and SAUNDERS concurring in the result, and Judge PRENTIS dissenting.

Affirmed.

HUTCHESON *v.* SAVINGS BANK OF RICHMOND.

Jan. 28, 1921.

[105 S. E. 677.]

1. **Fraudulent Conveyances (§ 295 (1)*)—Fraud Must Be Clearly Alleged and Proven.**—Fraud in a conveyance must be clearly alleged and proven; every presumption of law being in favor of innocence, and not of guilt.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 655.]

2. **Fraudulent Conveyances (§§ 271 (2), 295 (1)*)—Proof Must Be Clear, Cogent, and Convincing; Burden on One Alleging Fraud.**—The proof in suit to set aside fraudulent conveyances must be clear, cogent, and convincing, and the burden rests on the party alleging the existence of fraud.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 659.]

3. **Fraudulent Conveyances (§ 295 (2)*)—Fraud May Be Proved by Circumstances.**—Fraud in a conveyance may be proved, not only by positive and direct evidence, but by showing facts and circumstances sufficient to support the conclusion of fraud.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 659.]

4. **Fraudulent Conveyances (§ 163*)—Fraudulent Intent, Concurred in by Both Parties, Vitiates Conveyance.**—A fraudulent intent, con-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

curred in by both grantor and grantee, always vitiates a conveyance.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 623.]

5. Fraudulent Conveyances (§ 101*)—Relationship between Grantor and Grantee Not Badge of Fraud.—Relationship between grantor and grantee is not a badge of fraud in the conveyance, though, when fraud is charged, the dealings of related persons with each other will be closely scrutinized.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 566.]

6. Fraudulent Conveyances (§ 271 (4)*)—Until Evidence Raises Presumption of Fraud, Defendant to Bill to Set Aside Need Not Explain Them.—Until the facts and circumstances relied on and proved to establish fraud make out a case from which fraud will at least be presumed, defendant to a bill to set aside a transaction as fraudulent is not required to explain such facts and circumstances, though they are not altogether free from suspicion.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 659.]

7. Fraudulent Conveyances (§ 115 (1)*)—Preference to One Creditor Not Illegal, unless Benefit Accrues to Debtor.—Save in so far as prohibited by the Bankruptcy Act of Congress (U. S. Comp. St. §§ 9586-9656), neither at common law nor in Virginia is it immoral or illegal to prefer one creditor to another in a deed of assignment, neither having any lien, provided there is no design to secure some fraudulent or illegal pecuniary advantage or benefit therefrom to the debtor himself.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 590.]

8. Evidence (§ 77 (1)*)—No Presumption against Defendant for Failure to Call Witnesses, When Plaintiff Has Not Made Prima Facie Case.—There is no presumption against a defendant for failure to call witnesses, when plaintiff carrying the burden of proof has not made a prima facie case, and such presumption cannot be used to relieve plaintiff from the burden of proving his case.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 330.]

9. Equity (§ 342*)—Unverified Answers Afford No Evidence in Favor of Defendants, Amounting Merely to Traverse.—Answers in suit wherein answer under oath has been waived afford no evidence in favor of defendants, and amount to nothing more than a traverse, serving to compel plaintiff to prove the material allegations of his bill.

10. Fraudulent Conveyances (§ 156 (1)*)—Proof that Grantee Had Positive Knowledge of Grantor's Fraudulent Intent Unnecessary.—In order to avoid a conveyance, it is not necessary to prove the grantee had positive knowledge of the grantor's fraudulent intent; it being sufficient to prove the grantee had knowledge of facts justly calculated to excite suspicion in the minds of persons of ordinary

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care and prudence, and which would naturally prompt him to pause and inquire, and that such inquiry would have necessarily led to discovery of the facts from which the law imputes fraud to the grantor.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 561.]

11. Fraudulent Conveyances (§ 277 (1)*)—Grantee, in Case of Doubt as to Good Faith, Must Prove Payment of Consideration.—If from the relations of the parties and surrounding circumstances a doubt is thrown around the payment in good faith of the consideration for a conveyance of property, the grantee must prove payment of the consideration or the existence of and bona fides of the debts if the conveyance was made to pay debts due to the grantee.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 660.]

12. Fraudulent Conveyances (§ 155*)—To Vitiate Conveyance Grantee Must Have Had Notice of Intent.—To vitiate a conveyance as made to defraud the grantor's creditors, the grantee must have had notice of the grantor's intent.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 623.]

13. Fraudulent Conveyances (§ 271 (3)*)—When Prima Facie Case of Fraud Made, Burden of Proof Shifts.—When a prima facie case of fraud in a conveyance has been shown by plaintiff creditor, the burden of proof shifts, and defendant grantee must establish the bona fides of the transaction.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 582.]

14. Fraudulent Conveyances (§ 300 (2)*)—Recitals Not Sufficient to Establish Consideration Paid.—In suit by a creditor to set aside a deed as voluntary and fraudulent, the recitals in the deed that the consideration has been paid are not sufficient to establish that fact, and the burden of proving payment rests on the grantee.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 660.]

15. Stipulations (§ 18 (6)*)—As to Testimony to Particular Effect Not Agreement on Truth of Such Testimony.—Agreement that a witness, if put on the stand, will testify to a certain effect, is not an agreement that his statements, if so made, are admitted to be true.

16. Fraudulent Conveyances (§ 278 (1)*)—Evidence Held to Make Out Prima Facie Case of Fraud in Conveyance from Son to Father.—In suit by a bank to set aside, on the ground of fraud, deed made by a son to his father, evidence held sufficient to make out a prima facie case of fraud, and to put on defendants, particularly the father, the burden of vindication and explanation.

17. Equity (§ 392*)—Court Did Not Err in Receiving Deposition and Letter in Evidence after Defendants Had Made Election to Stand on Record.—In suit to set aside a fraudulent conveyance, where defendants had made their election to stand on the record and not risk the perils of cross-examination, there was no error in the trial court's ac-

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tion in receiving a deposition and letter in evidence, while refusing to allow defendants to take further depositions; admission of the matter not creating a new situation, entitling defendants to take testimony on the merits.

18. Equity (§ 392*)—Request to Take Further Testimony Must Set up New Matter and State Evidence Relied on.—Request to trial court to take further testimony, practically a request for rehearing, must set up new matter, and state distinctly the evidence relied on.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 502.]

Appeal from Chancery Court of Richmond.

Suit by the Savings Bank of Richmond against John A. Hutcheson. From decree for plaintiff, defendant appeals. Affirmed.

Miller & Miller, of Richmond, for plaintiff in error.

A. W. Patterson, of Richmond, for defendant in error.

UNITED STATES FIDELITY & GUARANTY CO. *v.* COUNTRY CLUB OF VIRGINIA, Inc.

Jan. 28, 1921.

[105 S. E. 686.]

1. Principal and Surety (§ 41*)—Plea of Surety Company Setting up Misrepresentations of Obligee on Bond Good.—In an action against a guaranty company on a surety bond, it was a good defense that the bonded party had falsely represented that he had never been in arrears or default.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 11.]

2. Principal and Surety (§ 159*)—Surety Company Had Burden of Proof on Issue of Misrepresentations in Applying for Bond.—A guaranty company sued on its surety bond had the burden of proof on the issue of false representations made by the obligee in its statement attached to application for the bond.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 343.]

3. Appeal and Error (§ 1005 (2)*)—Approved Verdict Not Disturbed Unless Unsupported or Plainly Wrong.—The Supreme Court of Appeals cannot disturb verdict of the jury approved by the trial court, unless wholly without evidence to support it, or so plainly wrong as to leave no doubt on the subject.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 628.]

4. Principal and Surety (§ 78*)—Surety on Bond of Treasurer of Club Liable for His Own Note in His Hands as Secretary.—A note executed by the secretary and treasurer of a country club for its stock

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.